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No. 72-529

DEC 6 1972

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In the Supreme Court of the United States

OCTOBER TERM, 1972

JACK P. F. GREMILLION,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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REPLY TO THE SOLICITOR GENERAL'S MEMORANDUM IN OPPOSITION TO THE GRANTING OF A WRIT OF CERTIORARI

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Under ordinary circumstances, a reply to the United States' memorandum in opposition might not be necessary or in order. However, in the case at hand, the references to the alleged testimony of certain of the witnesses at the trial of the petitioner are so distorted and misleading, and so flagrantly untrue, that counsel for the petitioner has been compelled to reply to said memorandum.

On Page 3 of the Government memorandum, reference is made to a "Mrs. Degan, the sole office employee of LL&T (R. 130)." (Whether or not Mrs.

Degan was the sole employee of LL&T has great bearing on her competency to testify regarding the authenticity and preparation of the worksheet about which she was questioned.) Except for a short period of time at the inception of the LL&T Corporation, which was not at the time of the preparation of the worksheet, Mrs. Degan was *not* the sole employee of LL&T, and the trial record is replete with references to other employees. There is reference made at R. 132 [1] to Edna Robinson, another employee. (Note that this reference is made within two (2) *pages* of the record page cited by the Government in this connection.) Reference is made at R. 132-133 to a Mrs. Frances Brousse, another employee. Reference is again made to Edna Robinson and Frances Brousse at R. 169-170. Reference is made at R. 195 to "all of the girls in the office" having to participate in certain typing. Further reference is made to Edna Robinson at R. 213-214. At R. 280, the following appears:

"Q. (BY MR. DYMOND):

Now, how many people worked in LL&T, not including executive personnel?

A. (BY GOVERNMENT WITNESS JANYCE DEGAN):

About six or seven."

At R. 574, it is again indicated that there were several secretaries in the office of LL&T. It is difficult

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[1] As in the Government memorandum, "R" refers to the original record, which has been lodged with the Clerk of this Court.

to understand how the Government can in good faith assert in its memorandum that Mrs. Degan was the sole office employee of LL&T, especially in view of the fact that *all* of the above references to other employees occur in the testimony of Government witnesses.

Although Mrs. Degan did testify that the *last two pages* of the multi-page worksheet were prepared by herself (R. 181), she also testified that Edna Robinson had prepared the rest of the worksheet. (R. 178-181). It was unequivocally established, again by Government witness, that the allegedly incriminating marginal notation on the worksheet, "keep in Bill Glennon's name," was put there by Edna Robinson (R. 187), whom the Government never produced to testify concerning the marginal notation or anything else, despite the fact that the records, worksheets, etc., were prepared by Edna Robinson or pursuant to her orders. (See, *e.g.*, R. 288.)

On Pages 3-4 of the Government memorandum, the Government asserts that the claim on appeal addressed to the authenticity of the worksheets is without substance because it "ignores the trial record," the worksheet having been admitted as a business record made in the course of the "systematic conduct of the enterprise." Federal Business Records Act, 28 U.S.C. 1732. It is submitted that the Government had to "ignore the trial record" in order to make the above statement. The testimony of a Government witness established that the worksheet was prepared from the LL&T stock journals and ledgers (R. 179), which were later

shown to be inaccurate and deliberately falsified. Again, the record is replete with references to the completely unreliable nature of virtually every type of LL&T corporate record. Reference is made to stockholder lists compiled from information written on "backs of envelopes" (R. 137) and "scraps of paper" (R. 244), to stockholder lists containing names of persons definitely known *not* to own stock, (R. 138, R. 244-259, R. 264-274, R. 614-616); to deliberate falsification of the pre-incorporation stockholders list (R. 139-144, R. 209-210, R. 308, R. 614-616); to falsified stock records and certificates (R. 167-168, R. 248-259, R. 264-274, R. 616); and to alteration of minutes of corporate meetings (R. 304, R. 617-620). In view of the fact that *all* of the above references to the unreliability of the LL&T records are taken from the testimony of *Government witnesses*, the Government's assertion that the petitioner's claim on appeal is without substance is difficult to accept, and the Government's assertion, if anything, appears to be without substance.

The next point which the Government distorts is in reference to the opinion of counsel letter signed by the Government witness, William Glennon. Although Mr. Glennon did testify that the letter was a "joint effort" and was composed in the petitioner's presence, he did not testify that the petitioner was part of that joint effort, as the Government would have one believe on Page 4 of the Government memorandum. (R. 591-596.) Furthermore, the letter in question is merely an opinion of counsel, and Government witness William Glennon apparently was chief counsel for LL&T at the time in

question. (R. 243.) That an opinion of counsel letter demonstrates an economic interest in the corporation is a nebulous and elusive theory at best, although it is admittedly characteristic of the unique brand of logic which the Government has employed throughout this case.

Regarding the Government counsel's remarks in his opening argument about a loan of $42,700 made by LL&T to petitioner, it is simply unrealistic to assert that such an error can be cured by a general instruction given five days after the error, and the Court is respectfully referred to the petitioner's original petition for certiorari for a full discussion of this point.

The last issue to be considered is the petitioner's contention that the Government is collaterally estopped from prosecuting him for perjury because of his former acquittal on each of the sixteen counts of the indictment returned by the Grand Jury before whom he allegedly perjured himself. Only two points need to be made in regard to this issue. First, assuming that the petitioner did perjure himself before the Grand Jury, such action would constitute an attempt to conceal the "original conspiracy," of which charge he was acquitted, and consequently should be viewed as an integral part of said conspiracy and nothing more. Secondly, the Government has taken a completely inconsistent position in that it asserts on one hand that the allegedly perjured testimony given was material enough to the Grand Jury investigation to support a charge of perjury, and yet was not material enough to be, of necessity, considered by the jury who acquitted the petitioner of

sixteen charges contained in the indictment returned by said Grand Jury. The Court is referred to the petition for certiorari for a more complete discussion of these points.

As regards any dispute as to the law involved in this case, and how it should be applied, it is understandable that Government counsel and defense counsel might disagree. However, it is not at all understandable or tolerable that the Government should so grossly and deliberately distort and/or ignore the trial record itself, as is demonstrated in the first four points discussed in this response to the Government's memorandum. If one prefers not to ascribe any improper motives to the Government in regard to this matter, one can only assume that the author of the Government memorandum has not read the transcript of the trial. Perhaps it is fortunate as well that the memorandum was not a statement given under oath, or the author himself might have been indicted for perjury.

CONCLUSION

For these reasons, as well as those reasons urged in the orginial petition for a writ of certiorari, a writ of certiorari should issue to review the judgment and opinion of the Fifth Circuit.

Respectfully submitte ,

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CERTIFICATE

The undersigned, a member of the bar of the United States Supreme Court, certifies that a copy of the enclosed reply to the Solicitor General's memorandum, has been forwarded postage prepaid, to the Solicitor General, Department of Justice, Washington, D.C. 20530, on this date.

New Orleans, Louisiana, this ____ day of ____, 1972.

F. IRVIN DYMOND
Attorney for Petitioner

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